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May 12, 1995

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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: IB Docket No. 95-22
Market Entry and Regulation of
Foreign-Affiliated Entities

Dear Mr. Caton:

Transmitted herewith on behalf of Univisa, Inc. are an original and nine copies of its Reply Comments with respect to the Commission's Notice of Proposed Rulemaking (FCC 95-53 rel. Feb. 17, 1995) in the above-referenced proceeding.

Respectfully submitted,

Barbara K. Gardner

Barbara K. Gardner

BKG/vlp
Enclosures

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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MAY 12 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Market Entry and Regulation of) IB Docket No. 95-22
Foreign-affiliated Entities) RM-8355
) RM-8392

To: The Commission

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REPLY COMMENTS OF UNIVISA, INC.

Univisa, Inc. ("Univisa"),^{1/} by its attorneys, hereby replies to the Comments submitted in response to the Commission's Notice of Proposed Rulemaking in the captioned proceeding (FCC 95-53 rel. Feb. 17, 1995) ("Notice").

In Univisa's view, the Comments strongly confirm that the Commission should not incorporate an effective market access test into the Section 310(b)(4) public interest analysis applicable to broadcast licensees. Instead, the FCC should

^{1/} Univisa is a domestic subsidiary of Grupo Televisa, S.A. ("Televisa"), a Mexican-owned company which is the leading producer of Spanish-language television programming in the world. Televisa owns television and radio broadcast stations and programming networks in Mexico, and through Univisa owns 12 and 25 percent interests respectively in the Univision Television Group Spanish-language television broadcast stations in the United States, and in the Univision network with which these stations are affiliated.

establish a rebuttable presumption that companies controlling any licensee that is subject to the statute may have up to 49 percent alien ownership, so long as aliens do not exercise de facto control of the licensee. The Commission should provide even greater flexibility where alien owners are citizens of countries traditionally friendly to the United States.

**I. THE PROPOSED MARKET ACCESS TEST, AN APPARENT
AFTERTHOUGHT IN THE BROADCAST CONTEXT, SHOULD
NOT BE APPLIED TO THAT MEDIUM.**

In its Comments, Univisa noted that the Commission's proposed market access test, although well-developed in the Notice with respect to entry by foreign carriers into the domestic market, seemed to be little more than an afterthought with respect to its possible application to foreign investment in domestic broadcast licensees. The parties' Comments bear out Univisa's assessment: of the more than fifty Comments filed in response to the Notice, a mere handful treat the subject of broadcasting at all, and only Fox Television Stations Inc. ("Fox") and National Broadcasting Company, Inc. ("NBC"), in addition to Univisa, devote substantial filings exclusively to the question of whether a market access test should be utilized in evaluating broadcast applications that propose indirect

foreign participation in excess of the statutory benchmarks. Indeed, only NBC supports such a test in this context. Without developing a far more extensive record in support of the notion, the Commission clearly should not apply a reciprocity standard to broadcasting.

In its Comments, NBC urges that because foreign broadcast markets have been kept tightly closed, particularly strong incentives to open them to U.S. investment are needed -- specifically, the "enticing carrots" of Section 310(b) exceptions, which NBC would permit only where U.S. entities "have the same actual and existing mirror image rights to participate in the relevant foreign market or markets."^{2/} But as Univisa previously pointed out, NBC itself is already a significant entrant in a foreign broadcasting market, *and needed no reciprocal market access test to facilitate that entry.*

Specifically, Univisa's comments explained that unlike international facilities-based carriers, U.S. broadcasters seeking entry to foreign markets will not need to interconnect with bottleneck foreign gatekeepers who, by virtue of dominant or even monopoly positions in their home markets, have the ability and incentive to discriminate in favor of their U.S. affiliates

^{2/} NBC Comments at 5, 6 (emphasis in original).

and against unaffiliated competing U.S. entrants. Thus, when the Mexican government recently auctioned certain government television channels to a new entrant, the winning bidder, Television Azteca, *in which NBC itself is an investor*, faced no Televisa-controlled facilities bottleneck through which it needed to pass in order to complete its broadcast transmissions: its facilities are independent of Televisa's. As a result, Televisa cannot leverage its market power to create competitive harm to NBC and Azteca; on the contrary, it must compete in the open marketplace with this new entrant for viewers and advertisers.^{3/}

Thus, if the Commission were to apply a reciprocal market access test to determine the extent to which Televisa, through Univisa, may invest in the Univision group of U.S. television stations, for example, such test would not perform its intended role of precluding anticompetitive behavior against U.S. entrants in Mexico such as NBC, since the broadcast medium provides no opportunities for such behavior in the first place.^{4/}

^{3/} Univisa Comments at 5-6.

^{4/} Univisa also explained that because alien ownership laws differ in their details from one nation to the next, "mirror image" reciprocity such as NBC advocates would be unworkable in the broadcast context. Univisa Comments at 7-9.

In addition, as Fox points out, although a market access standard may serve the Commission's policy objectives with respect to international telecommunications services and facilities, it may be counterproductive in the broadcast context in light of the clear purpose of Section 310(b)(4): to prevent foreign control of domestic communications facilities and thus protect United States national security interests.^{5/} As Fox notes, substituting a market access test for the broader public interest analysis called for by the statute in the broadcast context "-- or even weighting the analysis toward this factor -- would be inconsistent with the statute's underlying purpose to prevent foreign control."^{6/} As the Comments of Deutsche Telekom AG cogently explain, "there is no logical connection between this purpose and the 'effective market access' test proposed by the NPRM. The fact that a particular foreign country has an open or closed telecommunications market has nothing whatsoever to do with whether particular citizens of that

^{5/} Fox Comments at 1-2; see also Notice at 8, ¶ 16 & n.16. Univisa notes, however, that contrary to Fox's statements at page 2 and footnote 2 of its Comments, Section 310(b)(4) was not originally designed to prevent alien control of domestic broadcast outlets, but rather to preclude foreign dominance of international communications facilities. See Univisa Comments at 10-11.

^{6/} Fox Comments at 5.

country, if permitted to hold an indirect interest in a U.S. radio licensee, might pose a threat to United States security."^{7/}

Univisa further agrees with Deutsche Telekom that since Section 310(c) of the Communications Act expressly authorizes the Commission to consider reciprocity issues (in granting amateur radio licenses to aliens), while Section 310(b) does not (with respect to alien ownership of broadcast and other radio licenses), the Commission would be overreaching to apply a market access test to its Section 310(b)(4) determinations.^{8/}

^{7/} Deutsche Telekom Comments at 9. See also BT North America Inc. Comments at 15-16 ("Because the sole criterion for analysis under Section 310(b) is protection of national security, the Commission should not evaluate competitive market entry considerations under this provision."). (Although apparently made in the telecommunications context, these remarks of Deutsche Telekom and BT North America are equally applicable to the issue of whether to extend a market access test to broadcasting.)

For similar reasons, Univisa disagrees with the proposal of the Minority Media and Telecommunications Council that any relaxation of Section 310(b)(4) must be linked to providing capital to U.S. racial and ethnic minorities for investment in U.S. media ventures. Although a worthy objective, this goal has no nexus to the statutory purpose of protecting U.S. national security.

^{8/} Deutsche Telekom Comments at 8-9.

**II. THE COMMISSION SHOULD PRESUME THAT BROADCAST
LICENSEES CONTROLLED BY U.S. CITIZENS ARE IN
COMPLIANCE WITH SECTION 310(b)(4).**

In the Notice, the Commission asked commenters to "submit any other proposals they believe would be appropriate in defining our Section 310(b)(4) analysis for broadcast licensees, including those which might permit alien control of a licensee's parent company."^{9/} Univisa responded by asking the Commission to adopt a rebuttable presumption that companies controlling any licensee subject to Section 310(b)(4) of the Communications Act may have up to 49 percent alien ownership, so long as U.S. citizens control the licensee. Univisa also suggested that actual alien control by citizens of friendly nations should be considered.^{10/}

Univisa continues to believe that although broadcast licensees control the content of their transmissions, the risk to the public interest of adopting the rebuttable presumption suggested by Univisa is minimal, if not nonexistent. As noted by the Motion Picture Association of America, Inc. ("MPAA"), fears of foreign propaganda may have been reasonable when there were

^{9/} Notice at 43, ¶ 103.

^{10/} Univisa Comments at 9-20.

few information and entertainment sources, but do not present a risk today given the dozens of such sources broadly available to U.S. consumers.^{11/} As MPAA tellingly notes, the absence of restrictions on foreign investment in domestic cable systems and cable and DBS program networks has resulted in limited foreign investment in those types of entities, which also control the content of widely-distributed video transmissions, and minimal impact on U.S. consumers.^{12/} MPAA accordingly, like Univisa, favors "a more flexible approach to alien investment in broadcasting."^{13/}

Similarly, Fox urges, and Univisa agrees, that the purpose of Section 310(b)(4) is served, and its requirements satisfied, whenever the broadcast stations in question are under the actual control of U.S. citizens.^{14/} The requirement of a separate Section 310(b)(4) public interest determination for every alien investment in domestic licensees that exceeds the

^{11/} MPAA Comments at 5; see also Notice at 8-9 n.16 (noting reduced applicability of national security rationale given plethora of service providers today, and fact that no single licensee could take over the wireless or wireline services in the U.S. during wartime).

^{12/} MPAA Comments at 4-5.

^{13/} Id. at 4.

^{14/} Fox Comments at 6, 8.

statutory benchmark serves no conceivable national security interest, artificially reduces the pool of qualified potential U.S. licensees by restricting foreign investment, and inhibits competition and the resulting consumer benefits of a healthy broadcast industry.

III. CONCLUSION.

For the reasons stated above, the Commission should not adopt an effective market access test as a factor in Section 310(b)(4) determinations involving broadcast licensees. Absent actual alien control, the purpose of the statute is served when aliens own or vote up to 49 percent of the parent of a Commission broadcast licensee. In addition, the Commission should consider permitting even greater levels of alien ownership and control by citizens of nations with which the United States has traditionally enjoyed friendly relations.

Respectfully submitted,

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